

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 06-CA-11656-JGD

YVETTE DOWNEY, Individually
and as Mother and Next of Kin to
ASHLEY CELESTER, a Minor, and
ANTHONY DOWNEY,
Plaintiffs

v.

BDF HOLDINGS,, INC.,
Defendant

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ANSWER

The defendant, BDF Holdings, Inc., answers the plaintiff's Complaint as follows:

1. The defendant admits the allegations contained in paragraph 1.
2. The defendant admits the allegations contained in paragraph 2.
3. The defendant denies the allegations contained in paragraph 3.
4. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 and, therefore, neither admits nor denies the same.
5. The defendant admits the allegations contained in paragraph 5.
6. The defendant denies the allegations contained in paragraph 6.
7. The defendant admits the allegations contained in paragraph 7 of Count 1.
8. The defendant admits the allegations contained in paragraph 8 of Count 1.
9. The defendant admits the allegations contained in paragraph 9 of Count 1.
10. The defendant denies the allegations contained in paragraph 10 of Count 1.

11. The defendant denies the allegations contained in paragraph 11 of Count 1.
12. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of Count 1 and, therefore, neither admits nor denies the same.
13. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of Count 1 and, therefore, neither admits nor denies the same.
14. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of Count 1 and, therefore, neither admits nor denies the same.
15. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of Count 1 and, therefore, neither admits nor denies the same.
16. The defendant denies the allegations contained in paragraph 16 of Count 1.
17. The defendant denies the allegations contained in paragraph 17 of Count 1.
18. The defendant admits the allegations contained in paragraph 18 of Count 1.
19. The defendant admits the allegations contained in paragraph 19 of Count 1.
20. The defendant denies the allegations contained in paragraph 20 of Count 1.
21. The defendant denies the allegations contained in paragraph 21 of Count 1.
22. The defendant denies the allegations contained in paragraph 22 of Count 1.
23. The defendant denies the allegations contained in paragraph 23 of Count 1.
24. The defendant admits the allegations contained in paragraph 24 of Count 2.
25. The defendant denies the allegations contained in paragraph 25 of Count 2.
26. The defendant denies the allegations contained in paragraph 26 of Count 2 and paragraph 26 of Count 3.
27. The defendant denies the allegations contained in paragraph 27 of Count 3.

28. The defendant denies the allegations contained in paragraph 28 of Count 3.
29. The defendant denies the allegations contained in paragraph 29 of Count 4.
30. The defendant denies the allegations contained in paragraph 30 of Count 4.
31. The defendant denies the allegations contained in paragraph 31 of Count 4.
32. The defendant denies the allegations contained in paragraph 32 of Count 4.
33. The defendant admits the allegations contained in paragraph 33 of Count 5.
34. The defendant denies the allegations contained in paragraph 34 of Count 5.
35. The defendant denies the allegations contained in paragraph 35 of Count 5.
36. The defendant admits the allegations contained in paragraph 36 of Count 5.
37. The defendant denies the allegations contained in paragraph 37 of Count 6.
38. The defendant denies the allegations contained in paragraph 38 of Count 6.
39. The defendant admits the allegations contained in paragraph 39 of Count 7.
40. The defendant denies the allegations contained in paragraph 40 of Count 7.
41. The defendant denies the allegations contained in paragraph 41 of Count 7.
42. The defendant denies the allegations contained in paragraph 42 of Count 7.
43. The defendant admits the allegations contained in paragraph 43 of Count 8.
44. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of Count 8 and, therefore, neither admits nor denies the same.
45. The defendant denies the allegations contained in paragraph 45 of Count 8.
46. The defendant denies the allegations contained in paragraph 46 of Count 8.
47. The defendant denies the allegations contained in paragraph 47 of Count 8.
48. The defendant denies the allegations contained in paragraph 48 of Count 8.

- 49. The defendant denies the allegations contained in paragraph 49 of Count 8.
- 50. The defendant denies the allegations contained in paragraph 50 of Count 8.
- 51. The defendant admits the allegations contained in paragraph 51 of Count 9.
- 52. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of Count 9 and, therefore, neither admits nor denies the same.
- 53. The defendant denies the allegations contained in paragraph 53 of Count 9.
- 54. The defendant denies the allegations contained in paragraph 54 of Count 9.
- 55. The defendant denies the allegations contained in paragraph 55 of Count 9.
- 56. The defendant denies the allegations contained in paragraph 56 of Count 9.
- 57. The defendant denies the allegations contained in paragraph 57 of Count 9.
- 58. The defendant denies the allegations contained in paragraph 58 of Count 9.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The defendant says that the injuries alleged were caused in whole or in part by the plaintiff's own negligence which was greater than any negligence of the defendant. M.G.L. Ch. 231, §85.

SECOND AFFIRMATIVE DEFENSE

The defendant says if the plaintiff was injured and is entitled to recover as alleged in the plaintiff's complaint it is due to the liability of a third party for whom the defendant is not responsible wherefore, the plaintiff cannot recover in the instant action.

THIRD AFFIRMATIVE DEFENSE

The defendant says that the plaintiff's suit is subject to dismissal because of insufficiency of process pursuant to Mass. R. Civ. P. 12(b)(4).

FOURTH AFFIRMATIVE DEFENSE

The defendant says that the plaintiff's suit is subject to dismissal because of insufficiency of service of process, pursuant to Mass. R. Civ. P. 12(b)(5).

FIFTH AFFIRMATIVE DEFENSE

The defendant moves this Honorable Court to dismiss this civil action pursuant to Mass. R. Civ. P. 12(b)(6) inasmuch as the plaintiff has failed to state a claim against the defendant upon which relief can properly be granted.

SIXTH AFFIRMATIVE DEFENSE

The plaintiff failed to comply with the presentment requirements of M.G.L. Ch. 93A and their action under said statute is barred.

JURY CLAIM

The defendant claims a trial by jury as to all issues.

BDF HOLDINGS, INC.

By its attorney,

/s/ D. MICHAEL ARTER

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DATED: July 22, 2009

CERTIFICATE OF SERVICE

By, /s/ D. Michael Arter

D. Michael Arter